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HUMAN RIGHTS QUESTIONS: HUMAN RIGHTS SITUATIONS AND REPORTS OF SPECIAL RAPPORTEURS AND REPRESENTATIVES

Letter dated 27 October 1996 from the Permanent Representative of Myanmar to the United Nations addressed to the Secretary-General

I have the honour to transmit herewith a memorandum in connection with General Assembly resolution 50/194 of 22 December 1995, entitled "Situation of human rights in Myanmar" (see annex).

I should be grateful if the present letter and its annex could be circulated as a document of the General Assembly under agenda item 110 (c).

(Signed) Win MRA
Ambassador
Permanent Representative

ANNEX

Memorandum concerning the situation of human rights in Myanmar

Introduction

1. At its fiftieth session, the General Assembly adopted resolution 50/194 of 22 December 1995 entitled "Situation of human rights in Myanmar". When that resolution was considered, the Myanmar representative rejected all the negative elements in the draft and stated categorically that there existed no grounds for the continued consideration of the situation of human rights in Myanmar in view of the positively evolving situation in the country. The present memorandum aims to provide further information on the developments that have taken place in Myanmar.

Return of armed groups to the legal fold

2. For Myanmar, a country that had been plagued with the problem of insurgency since it regained independence, the return to the legal fold of the 15 armed groups is an unprecedented achievement in national reconsolidation, and consequently peace and stability have prevailed throughout the length and breadth of the country. Since independence in 1948, Myanmar has never experienced such peace and stability in its modern history. The resultant peace dividend is evident and has greatly contributed to the building of the nation. Despite the return to the legal fold of 15 out of 16 armed groups, the Government does not remain complacent and is continuing discussions with one remaining armed group, the Karen National Union (KNU), for its eventual return to the legal fold.

Detention

3. Building a peaceful, prosperous, modern and developed State is the national goal of Myanmar. Stability of the State, community peace and tranquillity and prevalence of law and order are vital in the process of nation-building. These essential conditions have been restored in Myanmar over the last few years through the sustained efforts of the Government of the Union of Myanmar with the cooperation of the people. Disruption of peace and stability can under no circumstance be permitted. It is imperative for the Government to act in accordance with existing laws whenever situations arise with potential for disturbing of peace and stability.

4. The Government has been unfairly criticized recently in its efforts to maintain law and order. These criticisms are grossly misleading. The Government has, in fact, never arrested or detained anyone arbitrarily. Action is taken against only those who transgress the existing laws.

5. Although the Government of Myanmar is committed to the building of a peaceful, modern and developed State, Myanmar is not yet a fully functioning democracy. Despite that, to demonstrate its tolerance, the Government allowed

the talks held by the National League for Democracy (NLD) on weekends. However, the talks became unruly and inflammatory. As a result, in early June 1996, the authorities concerned intimated to NLD that the talks would have to be discontinued. The talks, nevertheless, continued and became more inflammatory, even slandering the Government and the Tatmadaw (the Armed Forces). Moreover, the audience was blatantly incited to defy the Government regardless of the consequences. These defiant acts of NLD were tantamount to undermining the peace and stability of the State. Consequently, on 7 June 1996, the Government was constrained to proclaim Law No. 5/96, which stipulates, among other things, that whoever violates either directly or indirectly any of the following prohibitions shall be, when convicted, punished with imprisonment for a term of a minimum of 5 years to a maximum of 20 years and may also be liable to fine:

(a) Inciting, demonstrating, delivering speeches, making oral or written statements and disseminating in order to undermine the stability of the State, community peace and tranquillity and prevalence of law and order;

(b) Inciting, delivering speeches, making oral or written statements and disseminating in order to undermine national reconsolidation;

(c) Disturbing, destroying, obstructing, inciting, delivering speeches, making oral or written statements and disseminating in order to undermine, belittle and make people misunderstand the functions being carried out by the National Convention for the emergence of a firm enduring Constitution;

(d) Carrying out the functions of the National Convention or drafting and disseminating the Constitution of the State without lawful authorization;

(e) Attempting and abetting the violation of any of the above prohibitions.

6. Ignoring the existing law, NLD made plans to hold an "All Burma Party Congress" from 27 to 29 September. Though required by the existing administrative directives to seek prior permission for holding such a gathering from the authorities concerned, NLD, in disregard of the directives, continued with the plans.

7. Since May 1996, NLD has made moves with the objective of inciting riots and upheavals in the country. Its attempt in May to hold the NLD meeting with a view to drawing a parallel constitution, its repeated contacts with some embassies in Yangon and timing of the "All Burma Party Congress" to coincide with the fifty-first session of the General Assembly and the consideration of Cohen's amendment on Myanmar by the United States Congress clearly confirm the existence of a well-synchronized political movement to bring pressure on the Government of Myanmar both domestically and internationally.

8. To prevent the situation from relapsing to the anarchic conditions of 1988, the Government was compelled to ban the "All Burma Party Congress". In connection with the holding of the congress in question, some individuals were called in for a brief questioning. They have all been sent home.

Myanmar's integration into the Association of South-East Asian Nations

9. In international relations, Myanmar consistently upholds the five principles of peaceful coexistence. As a result of this policy, Myanmar has never in its modern history had disputes with its neighbours that were serious enough to upset the regional peace and security, and its relations with all neighbouring countries have always been close and cordial. The establishment of closer association with the region through friendly relations and mutually beneficial cooperation is the main component of Myanmar's foreign relations. Towards that end, steps have been taken systematically for eventual integration into the Association of South-East Asian Nations (ASEAN) and for closer association with the region.

10. Myanmar deposited the instrument of accession to the Treaty of Amity and Cooperation in South-East Asia at the twenty-eighth ASEAN Ministerial Meeting held in 1995. At that meeting, Myanmar also intimated its desire to become an observer. In December 1995, the Chairman of the State Law and Order Restoration Council and Prime Minister of the Union of Myanmar attended the meeting of the Heads of Government of the 10 South-East Asian countries held in Bangkok. At the twenty-ninth ASEAN Ministerial Meeting held at Jakarta from 20 to 24 July 1996, Myanmar was officially welcomed as an observer. In August 1996, Myanmar filed an application to become a full member of ASEAN with the ASEAN Standing Committee.

11. For closer association with the countries in the region, Myanmar has forged deeper understanding between the leadership of Myanmar and that of the region through bilateral visits. The Chairman of the State Law and Order Restoration Council visited the Lao People's Democratic Republic in June of 1994; Viet Nam in March 1995; Indonesia and Singapore in June 1995; China in January 1996; and Malaysia in August 1996. In October 1996 he visited Cambodia. In between these visits, he attended the tenth meeting of South-East Asian Heads of Government, held at Bangkok in December 1995. All these visits are eloquent testimony of the mutual understanding between the leadership of Myanmar and that of the region. With steps being taken for eventual integration into ASEAN as a full member, Myanmar's closer association with the region is a significant factor for the preservation and enhancement of regional peace and security.

Combating the drug menace

12. Myanmar's combat against the drug menace is based on a well-conceived national strategy. Remarkable progress has been made in the fight against the drug menace under this strategy.

13. In this context, Myanmar achieved a significant breakthrough when, earlier this year, U Khun Sa and his Mong Tai Army (MTA) renounced drug-trafficking and surrendered unconditionally, bringing with them a vast arsenal of assorted weapons. The returnees numbered in the tens of thousands. The renunciation of the drug trade by U Khun Sa and his army reflects their complete trust and confidence in the policy of the Government. Furthermore, given the track record

of MTA in drug-trafficking, this development constitutes a great stride forward in combating the drug menace at both the regional and international levels.

14. Myanmar is committed to the complete eradication of narcotic drugs.

National convention

15. Myanmar had two State constitutions - one promulgated in 1947 and the other in 1974. Drafted under pressure of the prevailing circumstances and not free from the influence of the British colonialists, the 1947 Constitution had weaknesses and flaws that led 10 years later to near disintegration of the country. Drafted to establish the centrally planned economy under the single-party system, the 1974 Constitution lost its relevance in the wake of drastic changes that are being effected politically and economically in the Union of Myanmar. Under the circumstances, the emergence of a new enduring Constitution that could guide the new political and economic system is imperative.

16. The National Convention, whose principal duty is to lay down basic principles for a new State Constitution, has made considerable headway. It has approved 15 chapter headings of the Constitution and laid down 104 fundamental principles that will constitute the basis of the State Constitution. It has also adopted detailed principles to be used under the chapter headings of the State, the State structure and the head of State and the detailed principles on self-administered areas for the chapter on the State structure. At its last session, the National Convention approved detailed basic principles on the formation of the three chapters, namely the legislative, the executive and the judiciary. At present, preparations are under way to resume the National Convention in November. When resumed, the National Convention will consider the matter of power sharing between the Central and States/Divisions Assemblies.

17. The National Convention is the only disciplined forum where dialogue is going on among the nationalities to achieve consensus on the detailed principles of the new State Constitution. And the success of the National Convention is the national priority.

Developments after lifting of restrictions on Daw Aung San Suu Kyi

18. On 10 July 1995, the Government of Myanmar lifted the restrictions placed on Daw Aung San Suu Kyi in accordance with the law under which action was taken against her. Since then, two major developments relating to NLD took place in Myanmar. First, NLD decided to withdraw from the National Convention when it was reconvened in November 1995. The National Convention is the only constitutional process being undertaken in accordance with the post-election plan of action set out in Declaration 1/90 issued by the Government on 27 July 1990. This is the plan understood and accepted by all political parties, including NLD. NLD had been actively participating in the National Convention. However, after the lifting of restrictions on Daw Aung San Suu Kyi, NLD decided to withdraw from the National Convention.

19. In May 1996, NLD took another sinister step by attempting to hold a public rally from 26 to 29 May. Over the past few years, the Government has through detailed programmes restored the peaceful and stable situation in the entire country while forging national reconsolidation on the one hand and striving for the emergence of a new enduring State constitution on the other. Under these circumstances, the attempts of NLD to initiate a parallel political process constitute a threat to the peace and stability of the country and its consequences are predictable.

20. Related to the above-mentioned moves of NLD are the subversive activities of NLD expatriate groups and other anti-government groups under the tutelage and involvement of aliens and mercenaries. A brief account of the background of these activities is in order here. Beginning in January 1993, two citizens of the United States of America, Robert Helvey and Gene Sharp, gave political defiance courses to members of the anti-government National Coalition Government of the Union of Burma (NCGUB), the All Burma Students' Democratic Front (ABSDF), NLD expatriate groups and KNU. In early 1994 and in 1995, similar courses were given by two other United States citizens. Around May 1996, after the fall of KNU headquarters at Manerplaw, Robert Helvey, together with two other United States citizens, Bruce Jerkin and Michael Mitchell, went to a KNU-held territory, Hti Ka Ba Lei, and reorganized the remnants of ABSDF and other anti-government groups. They are reported to have conducted political defiance courses for the members of the Committee on the Restoration of Democracy in Burma (CRDB), ABSDF and NCGUB and NLD expatriate groups at the KNU Sa Khan Thit camp. Michael Mitchell visited Yangon in April 1996, after which he met KNU leader Bo Mya in an apparent bid to coordinate and synchronize the moves of NLD. He again went back to Yangon and met with Daw Aung San Suu Kyi in May 1996, the same month NLD moved to organize a public rally. He last went to Myanmar from 15 to 20 August, during which time he met with Daw Aung San Suu Kyi.

21. Robert Helvey had previously served as the defence and army attaché at the United States Embassy in Yangon, and Bruce Jerkin is an administrative officer of the Albert Einstein Institution of the United States. Mitchell is a member of the International Republican Institute. By engaging in subversive activities, these individuals attempted to meddle in the internal affairs of Myanmar, which constitutes an outright infringement of its sovereignty. On its part, NLD, with full knowledge of these unlawful activities of a highly serious nature, has maintained contacts with them both secretly and otherwise.

22. The Government of Myanmar has set itself a political agenda. In this context, the Government has restored the stability of the State, community peace and tranquillity. With the return of the 15 armed groups to the legal fold, the Government is now in the process of a national reconsolidation. For the emergence of a new enduring State constitution, substantive progress has been made with the adoption of principles for the important chapters of the envisaged Constitution, based on the broadest possible national consensus.

23. The National Convention process is the chosen political path of the country in which a great amount of time, energy and resources have been invested. NLD, which had had its opportunity like other political parties to be engaged in this process of broad-based national dialogue, withdrew unilaterally from the National Convention, blithely ignoring the interests of all the parties involved

in it and embarked on a disruptive course of action by organizing a public rally. The Government cannot accept any disruption of the ongoing political process and, having been fully aware of all the subversive activities going on clandestinely, was constrained to take preventive action against the sinister moves of NLD, which were apparently made in concert with the subversive elements, by bringing in the members of NLD temporarily for questioning.

Myanmar's cooperation with the United Nations

24. When the Permanent Representative of Myanmar to the United Nations explained Myanmar's position on General Assembly resolution 50/194 (draft resolution A/C.3/50/L.52) entitled "Situation of human rights in Myanmar" (see A/C.3/50/SR.54, paras. 6-9), he stated the consistent policy of the Myanmar Government to continue to cooperate with the United Nations to the fullest extent possible. In conformity with this policy, and to enable the Representative of the Secretary-General to continue discussions with the Myanmar Government, Foreign Minister U Ohn Gyaw met with Mr. Alvaro de Soto, the Representative of the Secretary-General, in New York on 4 April 1996. Again in June 1996, the Myanmar Foreign Minister engaged in a round of discussion with the Director of the East Asia and the Pacific Division, Department of Political Affairs of the United Nations Secretariat, Mr. Francesc Vendrell, at Bangkok. On 2 October 1996, Foreign Minister U Ohn Gyaw had another round of dialogue with the Representative of the Secretary-General in New York.

Death of Mr. James Leander Nichols, a Myanmar citizen

25. Following the death in Myanmar of Mr. James Leander Nichols on 22 June 1996, some Western countries requested initially from the Myanmar authorities information on the circumstances leading to the death of Mr. Nichols and, subsequently, the exhumation of the body of the deceased for an internationally renowned specialist to perform an autopsy.

26. Mr. Nichols, aged 64, was a holder of a Myanmar citizenship card. He had committed criminal offences in 1980. Consequently, he was found guilty by the district court concerned under section 11/24 (b) of 1947 Foreign Currency Exchange Act. He was, as a result, sentenced to two-and-a-half months' imprisonment in 1982. Accordingly, his appointment as the Honorary Consul General of some Western countries was revoked in 1983. Once again in 1996, it was found that Mr. Nichols had infringed section 61 of the Burma Wireless Telegraphy Act of 1933 and Amendment Law No. 13/93 of 22 November 1993. He was granted a fair trial. As the district court found him guilty under section 61 of the above-mentioned Act, he was sentenced to three years' imprisonment.

27. Mr. Nichols was well looked after and given full and proper treatment while in prison. During three months of detention, the prison physician conducted a thorough medical examination of Mr. Nichols and gave him necessary treatment eight times, i.e., on 12, 16 and 24 April, 2, 5, and 23 May and 7 and 22 June 1996.

28. Mr. Nichols regularly received medication from the attending physician while in prison. In addition, he received medicine and food parcels from his family and friends. Far from being maltreated, he was allowed to live in conditions of considerable comfort and decency in the prison.

29. It was known to all his inmate friends that Mr. Nichols had a long history of serious health problems. He had high blood pressure, a heart condition, glaucoma in the right eye, diabetes and back pain. On the morning of 22 June, Mr. Nichols, after having consumed dried pork and fried fish-paste provided by his family, was relaxing in his room when he collapsed suddenly and lost consciousness. The prison physician checked his pulse and found that his blood pressure was running at 200/100. He was immediately taken to the Yangon General Hospital and was given necessary medical treatment. However, he died of cardiac disease at 1300 hours local time on the afternoon of 22 June 1996. An autopsy carried out by the lecturers-pathologists at the Yangon General Hospital established that the cause of death of Mr. Nichols was cardiac disease. Therefore the Government of Myanmar considered that:

(a) There exists no legal ground or basis for outsiders to probe into the matter relating to the death of Mr. James Leander Nichols in Myanmar on 22 June 1996 as he was merely an ordinary citizen of Myanmar and died of natural cause;

(b) It has been long established in State practice beyond any reasonable doubt that the death of an ordinary citizen of a country owing to a natural cause is a matter falling entirely within the domestic jurisdiction of the country. Any attempt by outsiders to impose an investigation into the non-issue will run counter to the principles of State sovereignty and national jurisdiction.

30. Myanmar therefore rejects the request to send an internationally renowned forensic expert to Myanmar to investigate the matter. There exists no reason whatsoever to consider such a request.

Improved situation in Myanmar

31. The situation in Myanmar has improved tremendously from that in 1991 when the General Assembly, in its resolution 46/132 of 17 December 1991, expressed concern at "the grave human rights situation" in Myanmar, stressing the need for its improvement. The objective conditions in today's Myanmar have improved beyond recognition and that is unmistakable except for those too consumed with negativism and bias. Notwithstanding Myanmar's consistent cooperation with the United Nations and the genuine efforts on the part of Myanmar to improve the country's situation and to uplift the general well-being of the entire populace, the improved situation in the country has never been given primacy.

32. The improved situation in the country is reflected in what has been achieved in the economic field. For example, on 31 August 1996, foreign investment in the 10 sectors of the economy for 204 projects stood at US$ 4,300 million. The private sector has now taken a larger share of the nation's economy, representing 76 per cent of the gross domestic product while

the State sector provides 22 per cent of the gross domestic product. Privatization programmes for the State sector of the economy have also begun. And 75 per cent of all exports come from the private sector. As the market economic system takes shape, annual economic growth rate was 8.2 per cent on average over the past four years, and Myanmar is capable of sustaining these growth rates. As employment opportunities present themselves through the expanding economy, the average citizen is able to fulfil the basic needs of food, shelter and clothing, which are the most fundamental human rights, and is able to enjoy a relatively high quality of life.

33. Also reflecting the improved situation is the peace the entire country is enjoying as the decades-long insurgency is almost at an end. Even places previously designated as unsafe and therefore out of limits are now swarming with tourists. The fact that 1996 has now been designated "Visit Myanmar Year", opening up the country to tourists, is a clear indication of the improved situation in the country and eloquent rebuke of all manner of allegations against Myanmar.

Position of Myanmar

34. The Myanmar delegation has made known its position on the successive United Nations resolutions on the so-called "Human rights situation in Myanmar" since the beginning of its consideration. In so doing, the sanctity of strict adherence to Article 2, paragraph 7, of the Charter of the United Nations was always underscored.

35. Myanmar will view consideration of "The situation of human rights in Myanmar" at the fifty-first session of the General Assembly in the light of the above-mentioned position. Should there be an intrusive draft resolution, Myanmar will not only reject it, but it will also respond to it in a manner commensurate with its tone and tenor.